

Board of Education Agenda Item

Item: C.

Date: February 15, 2006

Topic: First Review of Proposed Amendments to Virginia's Consolidated State Application Accountability Plan Under the *No Child Left Behind Act of 2001*

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Origin:

☐ Topic presented for information only (no board action required)

☒ Board review required by
☒ State or federal law or regulation
☐ Board of Education regulation
☐ Other: _____

☐ Action requested at this meeting ☒ Action requested at future meeting: March 22, 2006 (date)

Previous Review/Action:

☒ No previous board review/action

☐ Previous review/action
date _____
action _____

Background Information:

The *No Child Left Behind Act of 2001* (NCLB), which is a reauthorization of the Elementary and Secondary Education Act (ESEA), requires all state educational agencies (SEA) to submit for approval to the United States Department of Education (USED) individual program applications or a consolidated state application. In May 2002, the Virginia Board of Education submitted and received USED approval for its initial Consolidated State Application under the NCLB law. The NCLB application process involves multiple submissions of information, data, and policies. A major component of the consolidated application is Virginia's Consolidated State Application Accountability Workbook that describes a single statewide accountability system for the commonwealth. Virginia received USED approval for its accountability workbook in June 2003. Additional amendments were made to Virginia's workbook in September 2003, May 2004, and June 2005. The policies and procedures that were used to determine Adequate Yearly Progress (AYP) ratings for the 2005-2006 school year based on 2004-2005 assessment results are described in the amended workbook dated June 22, 2005.

States are permitted to revise their Consolidated State Application Accountability Workbook by submitting requests for review and approval to USED. Guidance from USED suggests an April 1, 2006,

deadline for requesting changes that would impact AYP determinations for the next academic year. Based on four years of implementing NCLB, the Virginia Department of Education has identified certain procedures in implementing AYP policies that may result in unintended consequences. As a result, the board is requested to consider the attached proposed amendments for submission to USED.

Summary of Major Elements

Revisions are being proposed to several critical elements in the Consolidated State Application Accountability Plan. The statutory authority that permits states to request, and the U.S. Secretary of Education to approve, waivers to requirements in NCLB is found in Section 9401 of the federal law:

“SEC. 9401. WAIVERS OF STATUTORY AND REGULATORY REQUIREMENTS.

- (a) IN GENERAL – Except as provided in subsection (c), the Secretary may waive any statutory or regulatory requirements of this act for a state educational agency, local educational agency, Indian tribe, or school through a local educational agency, that –
- (1) receives funds under a program authorized by this act; and
 - (2) requests a waiver under subsection (b).”

Virginia’s proposed amendments fall under seven major areas: (1) reversing the order of the school choice and supplemental educational services (SES) sanctions; (2) targeting choice and SES only to the subgroup and individual students not making AYP; (3) identifying for improvement only those schools that fail to make AYP for two consecutive years in the same subject and subgroup; (4) including the passing scores of all retests of SOL assessments required for graduation in the calculation of AYP; (5) including test scores from only certain grade levels in the 2006-2007 AYP performance calculation for subgroups; (6) extending flexibility in AYP calculation policies for students with disabilities; and (7) modifying testing and AYP calculation policies for limited English proficient (LEP) students. Attachment A describes each proposed amendment, the current NCLB policy approved for Virginia, and the rationale for the proposed request.

Superintendent's Recommendation:

The Acting Superintendent of Public Instruction recommends that the Board of Education accept for first review the proposed amendments to the Virginia Consolidated State Application Accountability Plan as permitted in Section 9401 of the federal law.

Impact on Resources:

The provisions of the *No Child Left Behind Act of 2001* require the Department of Education to collect and analyze data related to determining Adequate Yearly Progress (AYP) for all schools and school divisions in the state as well as to collect and report additional data on the English language proficiency and of limited English proficient (LEP) students. These requirements will continue to have an impact on the agency’s staff resources.

Timetable for Further Review/Action:

Following final approval, the proposed revisions will be submitted to the United States Department of Education as amendments to Virginia’s Consolidated State Application Accountability Workbook by the deadline of April 1, 2006.

Proposed Amendments to Virginia Consolidated State Application Accountability Plan Required in NCLB

February 2006

NCLB Statutory Authority for Amendment Requests:

“SEC. 9401. WAIVERS OF STATUTORY AND REGULATORY REQUIREMENTS.

(a) IN GENERAL- Except as provided in subsection (c), the Secretary may waive any statutory or regulatory requirement of this act for a state educational agency, local educational agency, Indian tribe, or school through a local educational agency, that —

(1) receives funds under a program authorized by this Act; and

(2) requests a waiver under subsection (b).”

1. Reversing Order of School Improvement Sanctions (Critical Elements 1.6 and 4.1)

Request: Virginia will allow schools the flexibility to reverse the order of sanctions in the first two years of school improvement. Supplemental educational services may be offered to eligible students attending Title I schools in improvement in the first year and public school choice in the second year.

Rationale: Currently, USED requires Title I schools in Year One Improvement status to provide eligible students the option of public school choice. Title I schools in Year Two Improvement status must provide eligible students supplemental educational services and continue to offer choice. An effective school choice plan requires time to develop and communicate to parents and the public. AYP is calculated using test scores from the spring administration and, therefore, AYP determinations are not available until late July or early August. This is too close to the opening of school for choice plans to be implemented effectively. A more effective intervention strategy for the first year of improvement is offering eligible students supplemental services while planning for choice implementation. If the school moves to Year Two Improvement status, the school would offer choice while continuing to provide supplemental educational services.

For the 2005-2006 school year, Virginia is participating in a USED pilot that permits four school divisions to provide SES to eligible students in Title I schools in the first year of school improvement in lieu of choice, thereby reversing the order of sanctions as specified in the law. The pilot divisions are reporting favorable results both in terms of a high level of student participation in SES and anticipated improvements in student achievement.

2. AYP: Targeting Choice and Supplemental Services (Critical Elements 1.6 and 4.1)

Request: Virginia will target supplemental educational services and public school choice for Title I schools in School Improvement only to the subgroup(s) and individual students that are not meeting the Adequate Yearly Progress (AYP) targets in reading/language arts and/or mathematics. Choice and supplemental services will be implemented only for the subgroup(s) and individual students not making AYP.

Rationale: The statute treats all schools that fail to make Adequate Yearly Progress (AYP) equally, regardless of whether such failure is based on one subgroup failing to make AYP in one subject, or all subgroups failing to make AYP in both reading and mathematics. Currently, all students in a Title I school in school improvement status are eligible for school choice, and all low-income students in a school that is in the second year of school improvement, corrective action, or restructuring are eligible to receive supplemental services, regardless of their performance on the Standards of Learning (SOL) assessments in reading/language arts and mathematics. Using federal funds to provide school choice to all students reduces the amount of funds available to serve students in the school that are not meeting the proficiency targets on the SOL assessments. Additionally, school divisions have reported that the majority of students who choose the choice option are not from low-income families nor are they students who are struggling academically. Similarly, using federal funds to provide tutoring services to all low-income students in a school reduces funds available to serve individual students in subgroups that are not meeting the proficiency targets on the SOL assessments in reading/language arts and mathematics. Since NCLB focuses on ensuring that 100 percent of Virginia's students are proficient in reading/language arts and mathematics by 2013-2014, it is imperative that all available resources are targeted toward those students who are not proficient. Using financial resources for students who are proficient in reading/language arts and mathematics limits the resources that could be used for students who are not proficient.

3. AYP: Consecutive Years Same Subject and Same Subgroup (Critical Element 1.6)

Request: Virginia will identify for improvement only those schools that fail to make AYP for two consecutive years in the same subject and for the same subgroup.

Rationale: Currently, USED requires that Title I schools that fail to meet AYP for two (or more) consecutive years be placed in Title I school improvement. USED regulations permit states to identify for school improvement only those schools that fail to meet AYP for two consecutive years in the same subject, but prohibit states from treating subgroups the same way. This model raises reliability concerns given the many subgroups (i.e., seven in Virginia) that could fail to demonstrate AYP for any given year. This policy also fails to recognize the different educational challenges and interventions that may be appropriate in cases where different subgroups fail to make AYP. Identifying schools in improvement based on not making AYP for two consecutive years in the same subject and same subgroup will target resources to the particular subgroup(s) that need them most.

4. Scores on Retests (Critical Element 3.2)

Request: Virginia will count a student's passing score on a retest of a Standards of Learning test in the calculation of AYP. Retests are provided to students who have previously failed a test they need for graduation.

Rationale: Virginia allows students who need a test for graduation to continue to take the test until they pass it. Currently, USED allows Virginia to count the scores of students who retake and pass expedited end-of-course tests in the calculation of AYP. Virginia requests to expand this policy to include the passing scores of all students who retake tests needed for graduation. Virginia believes counting a student's passing score on a retest rewards the student and the school for student success and will increase the validity of AYP determinations.

5. Grade Levels Included in AYP Calculations (Critical Element 3.2b)

Request: For the 2006-2007 AYP ratings based on tests administered in the 2005-2006 school year, the AYP *participation* rate calculation will be based on reading and mathematics tests administered in grades 3 through 8 and end-of-course. For the *all students* subgroup, AYP *performance* calculations will be

based on tests administered in grades 3 through 8 and end-of-course. The *performance* calculations for the other subgroups (e.g., students with disabilities, limited English proficient students, economically disadvantaged students, Black students, White students, and Hispanic students) will be based on tests administered at grades 3, 5, and 8. The newly implemented reading and mathematics tests at grades 4, 6, and 7 will be included in the AYP performance calculation for these subgroups only if their inclusion improves the rating of the school or division.

Rationale: As allowable under the final Title I regulations and approved in Virginia's Consolidated State Application Accountability Workbook, critical element 3.2b, a state may re-evaluate and adjust periodically the annual measurable achievement objectives and starting points, especially as new tests are introduced. With the introduction of new tests at grades 4, 6, and 7 for the 2005-2006 school year, Virginia will need sufficient time to evaluate the resulting data and determine if adjustments to the starting points and annual measurable objectives are warranted. Such data will not be available until the late summer or early fall of 2006. Based on this timeline Virginia is requesting permission to evaluate the test data from 2005-2006 and to re-set, if necessary, the starting points and annual measurable objectives for the 2007-2008 school year based on tests administered in 2006-2007. For 2006-2007 AYP ratings the current annual measurable objectives would be applied. All tests in reading and mathematics for grades 3 through 8 and end-of-course would be used in calculating the participation rate as well as in the performance measures for the all students subgroup. The scores for the newly implemented reading and mathematics tests for grades 4, 6, and 7 would be included in the performance calculations for the remaining subgroups only if they improved the school or school division's AYP rating. This procedure would take into account the fact that the reading and mathematics tests at grades 4, 6, and 7 were not represented when the initial starting points and annual measurable objectives were determined.

<p><i>6. Assessing Students with Disabilities – Inclusion of SWD Scores for Two Additional Years in AYP (Critical Element 5.3)</i></p>

Request: Beginning with the 2006-2007 AYP ratings based on tests administered in the 2005-2006 school year, Virginia will include the test scores of students previously identified within the students with disabilities subgroup for up to two years after they no longer receive special education services.

Rationale: In December 2005, USED released proposed regulations for special education students to assist states in improving how they measure the achievement

of students with disabilities. One of the proposed flexibility allowances is to permit states to count the scores of special education students in the students with disabilities subgroup for up to two years after they are no longer labeled as a student with disabilities. This flexibility will permit states to be given credit for the work that has been accomplished to increase the academic achievement of the students with disabilities.

7. Assessing Students with Disabilities – Use of Two Percent Proxy and One Percent Exception (Critical Element 5.3)

Request: Virginia will continue to implement the U.S. Secretary of Education's Transition Option #1 (two percent proxy) for the inclusion of students with disabilities in the calculation of Adequate Yearly Progress (AYP) for the 2006-2007 school year, based on assessments administered to those students during the 2005-2006 school year. The proxy will be calculated in accordance with guidance disseminated by USED on May 10, 2005. The proxy percentage applied in Virginia is 14 percent for reading and 17 percent for mathematics. In addition, Virginia requests an exception of 1.1 percent to the one percent cap on the number of proficient and advanced scores from alternate assessments based on alternate achievement standards that may be included in AYP.

Rationale: The U.S. Secretary of Education has extended the use of a proxy for students with disabilities who are pursuing modified achievement standards until final regulations on the application of flexibility for these students are promulgated. Virginia is requesting a continuation of the use of the proxy for these students under this extension.

The exception of 1.1 percent to the one percent cap on the number of proficient and advanced scores from the Virginia Alternate Assessment Program (VAAP) that may be included in AYP is being requested because final data on proficiency scores for VAAP are not yet available. It is possible that the number will fall below 1 percent. However, approval of the use of a 1.1 percent cap will provide the Virginia Department of Education with sufficient flexibility to work with those school divisions that have justifiably exceeded a one percent cap for the VAAP proficiency rate.

8. Inclusion of Limited English Proficient Students in State Assessments (Critical Element 5.4)

Request: Virginia will allow the reading component of the English language proficiency (ELP) test required under Title I, and the plain language forms of the statewide mathematics assessments to be used as the accountability measure

under section 1111(b)(3) for LEP students' academic achievement during their first 1-3 years of enrollment in the U.S. Students who do not achieve a passing score on the mathematics assessment or the reading component of the ELP test would not be counted in the AYP pass rate calculation, but would be counted toward the 95 percent participation rate calculation. This change will allow Virginia to continue implementing testing policies exempting newly arrived LEP students that are in state regulations and were in effect prior to NCLB.

Consistent with current policy, LEP students in grades 3 through 8 at the lower levels (Level 1 and Level 2) of English language proficiency will take the Standards of Learning assessments for English/reading and mathematics, with or without accommodations, or state-approved assessments linked to the Standards of Learning. LEP students cannot take assessments linked to the Standards of Learning for more than three consecutive years.

Rationale: Currently, USED requires that all students enrolled be included in state assessments, and that 95 percent of such students (overall and in each subgroup) participate for a school/division/state to demonstrate AYP. This includes LEP students, except for those LEP students in their first year of enrollment in a U.S. school, regardless of when they entered the country and their language proficiency. In some instances, however, it is not educationally valid or appropriate for newly enrolled LEP students with limited or no English proficiency to participate in English or mathematics state assessments. Additionally, since LEP students learn English at different rates, reporting their scores in AYP results may not be valid indicators of their performance in reading/language arts and mathematics for their first 1-3 years in U.S. schools.